



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

HD:hd
Docket No: 03341-98
8 December 1999

[REDACTED] USN

Dear Commander [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

Your request for promotion to commander was not considered, since you have not been selected for promotion to that grade by a duly constituted board of officers.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 2 December 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by the Navy Personnel Command dated 27 October, 6 November and 7 December 1998, and the advisory opinion from the Office of the Chief of Naval Operations (Chief of Chaplains) dated 21 October 1999, copies of which are attached. Your letter dated 23 July 1999 with enclosures and endorsement was also considered.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially agreed with the advisory opinions dated 27 October and 6 November 1998 in finding that the contested fitness reports and the detachment for cause (DFC) should stand. They found no violation of your rights to freedom of religion or free speech. Notwithstanding the opinion dated 21 October 1999, they found you were not punished for your religious convictions, but received the contested administrative actions because you manifested unwillingness to support Navy policy. They noted it does not appear, from the statements of your commanding officer and executive officer (enclosures (1) and (2) of the request for your DFC dated 1 November 1994), that you made it clear you would comply with direct orders to lead female combat pilots.

The Board was unable to find the political climate compelled the actions at issue. In this regard, they noted this climate did not prevent approving the withdrawal of your resignation, or directing your retention in the face of two administrative board recommendations for your discharge.

The Board likewise was unable to find that the contested fitness report for 9 September 1994 to 8 September 1995 was incorrect in stating you voluntarily took a public position in direct conflict with Navy policy and federal law. While you may not have initiated taking such a position, the Board observed that you did not have to respond to media inquiries.

Since the Board found no defect in your record, they had no basis to remove your failures by the Fiscal Year 1998 through 2000 Line Commander Selection Boards.

In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures

3341-99



DEPARTMENT OF THE NAVY
BUREAU OF NAVAL PERSONNEL
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

IN REPLY REFER TO
1610
NPC-311
27 October 1998

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: NPC/BCNR Coordinator (Pers-00XCB)

Subj: LCDR [REDACTED]

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his original fitness reports for the periods 20 July 1994 to 08 September 1994, 09 September 1994 to 08 September 1995. He also request the removal of three letters concerning detachment for cause, and promotion to CDR with backdated date of rank and commensurate back pay had he not been passed over for selection by the FY98 Active Commander Line Promotion Selection Board.

2. Based upon a review of the material provided, the following information is provided:

a. Review of the member's headquarters record revealed the following:

b. LCDR [REDACTED] is the Officer-In-Charge of HSL-44 Detachment Six. On 25 August 1994 LCDR [REDACTED] informed his Commanding Officer that he could not lead his detachment, the Navy's first LAMPS MK 111 (which was scheduled to deploy on 29 August 1994) that included female pilots in the vicinity of Haiti when the invasion of that country was imminent. He stated his religious beliefs prevented him from supporting DOD/USN policy with respect to women employed in combat roles. He also alleges he is a victim of gender discrimination. In view of the above, LCDR [REDACTED] received two adverse fitness reports for the period 20 July 1994 to 8 September 1994 and 9 September 1994 to 8 September 1995. On 1 November 1994, HSL-44 initiated processing LCDR [REDACTED] detachment for cause by reason of unsatisfactory performance of duty involving a significant event.

c. In reviewing petitions that question the exercise of the reporting senior's evaluation responsibilities, we must determine if the reporting senior abused his/her discretionary authority. For us to recommend relief, the petitioner has to show that either there is no rational support for the reporting senior's action or that the reporting senior acted for an illegal or improper purpose. The petitioner must do more than just assert the improper exercise of discretion; he/she must provide evidence to support the claim. The fitness report itself represents the opinion of the reporting senior. Nothing provided in the petition shows that the reporting senior acted for illegal or improper purposes or that the reports lacked rational support. A fitness report does not have to be consistent with previous reports. Each fitness report represents the judgment of the reporting senior during a particular reporting period.

d. On 1 November 1994, LCDR [REDACTED] is processed for detachment for cause by HSL-44. The detachment was approved through the chain of command and approved by the Chief of Naval Personnel on 18 January 1995. LCDR [REDACTED] appeared before an Administrative Board in May 1995 and a Board of Inquiry in July 1995, with both boards recommending discharge. However, on 18 August 1995, the Chief of Naval Operations, Admiral Boorda, in a memorandum to the Secretary of the Navy recommended LCDR [REDACTED] be retained on active duty with his concurrence and would direct the Chief of Naval Personnel to assign him to a billet consistent with his demonstrated abilities and the circumstances of this case. It should be noted that both the Chief of Naval Operations and the Secretary of the Navy agreed the chain of command acted properly in this case.

e. The member does not prove the reports to be unjust or in error.

3. We recommend retention of the fitness reports, all correspondence associated with the detachment for cause, and the member's petition be forwarded to the Director, Active Officer Promotions, Appointments, and Enlisted Advancement Division (NPC-85) for comments on the member's request for retroactive promotion to Commander.

4. We cannot determine if the gender discrimination complaint against the member has merit and recommend the member's petition be forwarded to the Director, Equal Opportunity Division (NPC-61) for comment.



Head, Performance
Evaluation Branch



DEPARTMENT OF THE NAVY
BUREAU OF NAVAL PERSONNEL
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

IN REPLY REFER TO

5420
NPC-61
6 NOV 98

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTIONS
OF NAVAL RECORDS

Via: Assistant for BCNR Matters (Pers-00ZCB)

Subj: LCDR [REDACTED] III, USN, [REDACTED]

Encl: (1) BCNR File 03341-98 w/Service Record
(2) NAVPERSCOM (NPC-311) memo of 27 OCT 98

1. Enclosure (1) is returned. The member feels that he was the victim of gender discrimination. Enclosure (2) recommended that this office determine if the member's complaint has merit.

2. Based upon a review of the material provided, the following information is provided:

a. LCDR [REDACTED] was the Officer-In-Charge of HSL-44 Detachment Six. HSL-44 Detachment Six was scheduled to be the first to deploy with female pilots on 29 August 1998 to support operations in Haiti.

b. Statements from the XO of HSL-44, [REDACTED] and the CO, [REDACTED] charged [REDACTED] had stated to them that he was unable to support the Department of Defense and US Navy policy with respect to employing women in combat assignments. He also said that he could not continue in his assignment to HSL-44 Detachment Six.

c. LCDR [REDACTED] was relieved as OIC so that a replacement could lead the Detachment on 29 August 1998.

d. LCDR [REDACTED] stated in his resignation letter of 6 September 1998 that he could not support the policy of sending women into combat roles.

e. On 1 November 1994, [REDACTED] was processed for detachment for cause by HSL-44. It was approved through the chain of command and finally on 18 January 1995 by Chief of Naval Personnel. LCDR [REDACTED] went before an Administrative Board and a Board of Inquiry. Both boards recommended that he

be discharged. However, Admiral Boorda, Chief of Naval Operations, in a memorandum dated 18 August 1998, recommended to the Secretary of the Navy that LCDR [REDACTED] be retained on active duty. The Chief of Naval Personnel was directed to assign LCDR [REDACTED] to a billet consistent with his demonstrated abilities and the circumstances of his detachment for cause.

3. It is my opinion that LCDR [REDACTED] was relieved for cause because, as an Officer-In-Charge, he would not support Navy policy, which was his obligation to obey. He was not relieved because he was a man who merely stated an opposing opinion to the policy.

4. I cannot address why he was not assigned to a flight status, however, he was retained on active duty and assigned to a billet consistent with his demonstrated abilities, as directed by the Chief of Naval Operations. It is therefore recommended that his complaint of gender discrimination be dismissed without merit.

[REDACTED]

CDR USN
Director, Professional
Relationships Division
NPC-61



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND

5720 INTEGRITY DRIVE

MILLINGTON TN 38055-0000

5420

Ser 85/341

7 Dec 98

MEMORANDUM FOR BCNR

Via: BUPERS/BCNR Coordinator

Subj: LCDR [REDACTED] III, USN [REDACTED]

Ref: (a) NPC-311 memo 1610 of 27 Oct 98

Encl: (1) BCNR File

1. Enclosure (1) is returned, recommending disapproval of Lieutenant Commander [REDACTED] request to backdate his date of rank to Commander resulting from the FY98 Active Commander Line Promotion Selection Board.
2. Retention of the original fitness reports for the periods 20 July 1994 to 8 September 1994 and 9 September 1994 to 8 September 1995, have been addressed by reference (a).
3. Lieutenant Commander [REDACTED] request for promotion to Commander with a backdated date of rank cannot be supported. Despite the administrative action that has been taken regarding the time periods in question, the fitness reports, as discussed in reference (a), remain valid. Without removal of the stated fitness reports, the competitiveness of his record when compared to the records of his peers does not improve. If the fitness reports in question are removed, then removal of his failure of selection could be reconsidered.
4. Recommend disapproval of his request.

[REDACTED]
BCNR Liaison, Officer Promotions
and Enlisted Advancements Division

3341-99



DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON, D.C. 20350-2000

IN REPLY REFER TO

1300
Ser NO973/90277
OCT 21 1999

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: BCNR Coordinator (PERS-00ZCB)

Subj: REQUEST FOR ADVISORY OPINIONS IN THE CASE OF LCDR
[REDACTED]

Ref: (a) DoD Directive 1300.17
(b) SECNAVINST 1730.8A

Encl: (1) BCNR File 03341-98

1. Enclosure (1) has been reviewed and the following advisory opinions are offered:

a. Pertinent Navy policy is as follows:

(1) Pursuant to references (a) and (b), it is DoD and Navy policy to "accommodate the doctrinal and traditional observances of the religious faith practiced by individual members when these doctrines or observances will not have an adverse impact on military readiness, individual or unit readiness, unit cohesion, health, safety or discipline."

(2) Pursuant to reference (b), "Accommodation of a member's religious practices cannot be guaranteed at all times but must depend on military necessity. Determination of necessity rests entirely with the commanding officer."

(3) Pursuant to reference (b), "When requests for accommodation are not in the best interests of the unit, but continued tension between the unit's requirements and the individual's religious beliefs is apparent, administrative action is authorized, but not limited to: Reassignment, reclassification, or separation consistent with Secretary of the Navy (SECNAV) and Service regulations."

b. It is my opinion that LCDR [REDACTED] personal religious convictions regarding women in combat are sincere and important to him. At the time of his relief it seems obvious

Subj: REQUEST FOR ADVISORY OPINIONS IN THE CASE OF LCDR
[REDACTED] USA [REDACTED]

reports dated 94 JUL 20 to 94 SEP 08 and 94 SEP 09 to 95 SEP 08, however, do not appear to be consistent with references (a) and (b). Religious conviction should not be the reason for relief for poor performance. His religious convictions may preclude his continued service as a pilot or even as an officer in the Navy, but should not be the occasion for a punitive fitness report.

2. If this office can be of any further assistance my point of contact is CAP [REDACTED] at [REDACTED]

[REDACTED]

Chief of Chaplains